

Dated: February 23, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

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[FRL-4843-7]

Alabama: Final Determination of Adequacy of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final partial program determination of adequacy of the State of Alabama's municipal solid waste landfill permit program.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule governing such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the

approval status of a State/Tribe and the permit status of any facility, the Federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

Alabama applied for a determination of adequacy under section 4005 of RCRA. EPA Region IV reviewed Alabama's MSWLF application and made a tentative determination of adequacy for those portions of the MSWLF permit program that are adequate to ensure compliance with the revised MSWLF criteria. After reviewing all comments received, EPA today is granting final approval to Alabama's partial program.

EFFECTIVE DATE: The determination of adequacy for the State of Alabama shall be effective on March 2, 1994.

FOR FURTHER INFORMATION CONTACT: EPA Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365, Attn: Ms. Patricia S. Zweig, mail code 4WD-OSW, telephone 404-347-2091.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to propose in STIR to allow partial approval if: (1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with part 258; (2) changes to a limited narrow part(s) of the State/Tribal permit program are needed to meet those requirements; and (3) provisions not included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of part 258. As provided in the October 9, 1991, municipal landfill rule, EPA's national Subtitle D standards took effect on October 9, 1993. Consequently, any portion of the Federal Criteria that are not included in an approved State/

Tribal program by directly to the owner of any approved State/Tribal program. On October 1, 1993, the effective date was extended for certain smaller landfills and for certain landfills receiving waste from flood disaster areas (58 FR 51536). The effective date is now April 9, 1994, for MSWLFs that accept less than 100 tons of waste per day, are not a Superfund National Priority List site, and are either in a State that has submitted an application to EPA for approval before October 9, 1993, or are located on Tribal lands. The effective date has been extended to October 9, 1995, for very small (less than 20 tons of waste per day), remote landfills in arid climates that lack a practicable alternative for waste disposal or experience significant disruption of surface transportation. Certain large facilities receiving waste from flood disaster areas also are allowed an extension of the compliance date if the State determines that they are needed to dispose of flood debris. The requirements of the STIR, if promulgated, will ensure that any mixture of State/Tribal and Federal rules that take effect will be fully workable and leave no significant gaps in environmental protection. These practical concerns apply to individual partial approvals granted prior to the promulgation of the STIR. Consequently, EPA reviewed the program approved today and concluded that the State/Tribal and Federal requirements mesh reasonably well and do not leave significant gaps. Partial approval would allow the Agency to approve those provisions of the State/Tribal permit program that meet the requirements and provide the State/Tribe time to make necessary changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State/Tribal permitting agency to take advantage of the flexibility allowed under the Federal criteria for approved states for those portions of the State's program that have been approved.

EPA will review State/Tribal requirements to determine whether they are "adequate" under section 4005(c)(1)(C) of RCRA. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a

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permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program. EPA also is requesting States/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. EPA notes that it intends to propose to make submissions of a schedule mandatory in the STIR.

As a State's/Tribe's regulations and statutes are amended to comply with the Federal MSWLF landfill regulations, unapproved portions of a partially approved MSWLF permit program may be approved by the EPA. The State/Tribe may submit an amended application to EPA for review and an adequacy determination will be made using the same criteria as for the initial application. This adequacy determination will become effective sixty (60) days following publication if no adverse comments are received. If EPA receives adverse comments on its adequacy determination, another Federal Register notice will be published either affirming or reversing the initial decision while responding to the public comments.

B. State of Alabama

On July 9, 1993, the State of Alabama submitted a final application for partial program adequacy determination for their MSWLF permit program. On December 17, 1993, EPA published a tentative determination of adequacy for all portions of Alabama's program except for the Financial Assurance Criteria set forth in Subpart G. Further background on the tentative determination of adequacy appears at 58 FR 65982, (December 17, 1993).

Along with the tentative determination, EPA announced the availability of the application for public comment and the date of a public

hearing on the application. Region IV of EPA held a public hearing on February 10, 1994, at 7 p.m. in Montgomery, Alabama.

The State of Alabama has the authority to issue permits that incorporate all the requirements of the Revised Federal MSWLF Criteria, except Financial Assurance, to all MSWLFs in the State, with the exception of those located on Tribal Lands.

The EPA has determined that the State of Alabama's statutes and administrative regulations provide for a state-wide comprehensive program of solid waste management including specific provisions for public participation, compliance monitoring and enforcement.

The State of Alabama requested approval for all portions of the Federal criteria except Subpart G—Financial Assurance Criteria. The Alabama Department of Environmental Management does not currently have statutory authority to develop and enforce financial assurance regulations for MSWLFs. The schedule that Alabama submitted indicates that the necessary changes to the laws, regulations, and guidance to comply with the remaining part 258 requirements will be completed by January, 1995.

C. Public Comment

One written comment was submitted during the public comment period. The commenter supported the tentative decision to partially approve Alabama's MSWLF permit program. There were no written or oral comments submitted during the public hearing.

D. Decision

After reviewing the public comments submitted in response to the tentative decision, I conclude that Alabama's application for partial program adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Alabama is granted a partial program determination of adequacy for all portions of its MSWLF permit program except Subpart G—Financial Assurance Requirements.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal

Criteria. See 56 FR 50978, 50995 (October 9, 1991).

This action takes effect on the date of publication. EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), to put this action into effect less than 30 days after publication in the Federal Register. All of the requirements and obligations in the State's program are already in effect as a matter of State law. EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by EPA as Federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance with Executive Order 12866

The Office of Management and Budget has exempted this action from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This action, therefore, does not require a regulatory flexibility analysis.

Authority: This notice of final partial program adequacy determination of Alabama's municipal solid waste permit program is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: February 18, 1994.

John H. Hankinson, Jr.,
Regional Administrator.

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[FRL-4843-6]

State of Florida; Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on Florida application for full program adequacy determination, public hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit